



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,255	02/07/2002	Alexander D. Stoyen	110344.101US2	6624

24395 7590 12/13/2004

WILMER CUTLER PICKERING HALE AND DORR LLP  
THE WILLARD OFFICE BUILDING  
1455 PENNSYLVANIA AVE, NW  
WASHINGTON, DC 20004

EXAMINER

STARKS, WILBERT L

ART UNIT	PAPER NUMBER
----------	--------------

2121

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/067,255	STOYEN, ALEXANDER D.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Wilbert L. Starks, Jr.	2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. The §101 rejections are withdrawn.

***Claim Rejections - 35 U.S.C. §112***

2. The following is a quotation of the second paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-46 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically:

**Claims 1, 43, 44, 45, and 46**

4. In independent claims 1, 43, 44, 45, and 46, Applicant discloses the following samples of unclear terms and phrases:

- A) "near certainties"
- B) "longer term possibilities"
- C) "processing the combat situation"
- D) "configuring"

5. Now, regarding A) above, it is unclear whether "near certainties" refers to events that are nearly certain or to things that are certain to happen in the near-term. The

Art Unit: 2121

context of this term is ambiguous and could lead to either meaning. One of ordinary skill in the art would not be able to tell what Applicant regards as his invention.

6. Similarly, with B) above, the term "longer term possibilities" is open ended and it is unclear what a "longer term" is relative to. In Applicant's arguments, he discusses the acceptability of the term "substantially." That would be a proper discussion if Applicant had used the word "substantially"...that word is used often in the law and legal professionals have an intuitive feel for the meaning of that term. The phrase "longer term" is not such a word. It is not often used in law, is vague and could refer to time frames from now to eternity. It is open-ended and does not limit the invention to anything. Applicant could just as accurately have used the bare term "possibilities" rather than the term "longer term possibilities." It refers to the same frames of time.

7. Furthermore, Applicant's word "possibilities" itself is fully open to anything that can happen: Eventualities ranging from enemy aircraft appearing on radar to electronic warfare (EW) effects showing up on instruments. Any "possibilities" are within its scope. It is unknown whether the invention is designed to act in an air-to-air role, an air-to-ground role, an EW role, a combat logistics role, or whatever. This is significant because:

8. Each of these is a different invention.

Art Unit: 2121

9. Each requires different data inputs, algorithms, and response profiles (responding to an EW attack is entirely different from countering a hypersonic SAM, which is different from countering robotic FLAK, which is different from engaging an enemy dogfighter, which is different from other "possibilities".) Applicant has not clarified which invention is disclosed and how it operates. He has only claimed the universe of such inventions. Applicant has not "particularly pointed out and distinctly claimed the subject matter which applicant regards as the invention" as §112 requires.

10. Regarding C) above, the same is true. The term "processing the combat situation" does not limit the disclosure to a specific invention.

11. What kind of "processing" is Applicant seeking to disclose?

12. It has not been specified whether he is using a simplex algorithm to manage munitions mixes for a squadron, whether he is finding a solution to a traveling salesman algorithm in order to plan a set of bombing runs, whether he is analyzing OODA (Boyd cycle) parameters in order to "get inside of" the enemy's decision loops, whether he is facilitating maneuver selection within a dogfight, whether he is prioritizing targets for missile targeting, or whether he is simply managing G-suit pressures.

13. Each of these is a different invention.

Art Unit: 2121

14. Each requires different data inputs, algorithms, and response profiles. Applicant has not clarified which invention is disclosed and how it operates. He has only claimed the universe of such inventions. Applicant has not "particularly pointed out and distinctly claimed the subject matter which applicant regards as the invention" as §112 requires.

15. Regarding C) above, the same is true. The term "configuring" could mean anything from initializing parameters for calculation to opening computer ports for communication to simply pressing the "ON" button of the system. Applicant's term does not disclose any apparatus configuration or process steps. Applicant has not "particularly pointed out and distinctly claimed the subject matter which applicant regards as the invention" as §112 requires.

16. On these bases, the §112, second paragraph rejections of the previous action are not withdrawn.

### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 2121

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

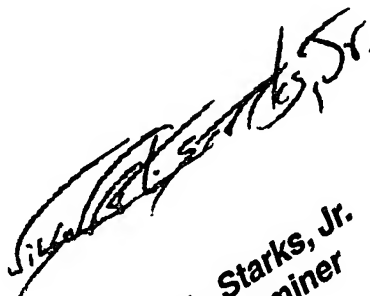
19. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Wilbert L. Starks, Jr. whose telephone number is (571) 272-3691.

Alternatively, inquiries may be directed to the following:

<b>S. P. E. Anthony Knight</b>	<b>(571) 272-3687</b>
<b>After-final (FAX)</b>	<b>(703) 746-7238</b>
<b>Official (FAX)</b>	<b>(703) 746-7239</b>
<b>Non-Official/Draft (FAX)</b>	<b>(703) 746-7240</b>

WLS

07 December 2004



Wilbert L. Starks, Jr.  
Primary Examiner  
Art Unit - 2121